

agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

- (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2556; Pub. L. 98-353, title III, § 424, July 10, 1984, 98 Stat. 369; Pub. L. 99-554, title II, § 257(b), Oct. 27, 1986, 100 Stat. 3114.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Extension of time: The House amendment adopts section 108(c)(1) of the Senate amendment which expressly includes any special suspensions of statutes of limitation periods on collection outside bankruptcy when assets are under the authority of a court. For example, section 6503(b) of the Internal Revenue Code [title 26] suspends collection of tax liabilities while the debtor's assets are in the control or custody of a court, and for 6 months thereafter. By adopting the language of the Senate amendment, the House amendment insures not only that the period for collection of the taxes outside bankruptcy will not expire during the title 11 proceedings, but also that such period will not expire until at least 6 months thereafter, which is the minimum suspension period provided by the Internal Revenue Code [title 26].

SENATE REPORT NO. 95-989

Subsections (a) and (b), derived from Bankruptcy Act section 11 [section 29 of former title 11], permit the trustee, when he steps into the shoes of the debtor, an extension of time for filing an action or doing some other act that is required to preserve the debtor's rights. Subsection (a) extends any statute of limitation for commencing or continuing an action by the debtor for two years after the date of the order for relief, unless it would expire later. Subsection (b) gives the trustee 60 days to take other actions not covered under subsection (a), such as filing a pleading, demand, notice, or proof of claim or loss (such as an insurance claim), unless the period for doing the relevant act expires later than 60 days after the date of the order for relief.

Subsection (c) extends the statute of limitations for creditors. Thus, if a creditor is stayed from commencing or continuing an action against the debtor because of the bankruptcy case, then the creditor is permitted an additional 30 days after notice of the event by which the stay is terminated, whether that event be relief from the automatic stay under proposed 11 U.S.C. 362 or 1301, the closing of the bankruptcy case (which terminates the stay), or the exception from discharge of the debts on which the creditor claims.

In the case of Federal tax liabilities, the Internal Revenue Code [title 26] suspends the statute of limitations on a tax liability of a taxpayer from running while his assets are in the control or custody of a court and for 6 months thereafter (sec. 6503(b) of the Code [title 26]). The amendment applies this rule in a title 11 proceeding. Accordingly, the statute of limitations on collection of a nondischargeable Federal tax liability of a debtor will resume running after 6 months following the end of the period during which the debtor's assets

are in the control or custody of the bankruptcy court. This rule will provide the Internal Revenue Service adequate time to collect nondischargeable taxes following the end of the title 11 proceedings.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-554, § 257(b)(1), inserted reference to section 1201 of this title.

Subsec. (c). Pub. L. 99-554, § 257(b)(2)(A), inserted reference to section 1201 of this title in provisions preceding par. (1).

Subsec. (c)(2). Pub. L. 99-554, § 257(b)(2)(B), which directed the amendment of subsec. (c) by inserting "1201," after "722," was executed to par. (2) by inserting "1201," after "922," as the probable intent of Congress.

1984—Subsec. (a). Pub. L. 98-353, § 424(b), inserted "nonbankruptcy" after "applicable" and "entered in a" in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98-353, § 424(a), substituted "or" for "and" after the semicolon.

Subsec. (b). Pub. L. 98-353, § 424(b), inserted "nonbankruptcy" after "applicable" and "entered in a" in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98-353, § 424(a), substituted "or" for "and" after the semicolon.

Subsec. (c). Pub. L. 98-353, § 424(b), inserted "nonbankruptcy" after "applicable" and "entered in a" in provisions preceding par. (1).

Subsec. (c)(1). Pub. L. 98-353, § 424(a), substituted "or" for "and" after the semicolon.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

§ 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act; or

(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.

(c) An entity may be a debtor under chapter 9 of this title if and only if such entity—

(1) is a municipality;

(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;

(3) is insolvent;

(4) desires to effect a plan to adjust such debts; and

(5)(A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(C) is unable to negotiate with creditors because such negotiation is impracticable; or

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

(d) Only a person that may be a debtor under chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title.

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000, or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$250,000 and noncontingent, liquidated, secured debts of less than \$750,000 may be a debtor under chapter 13 of this title.

(f) Only a family farmer with regular annual income may be a debtor under chapter 12 of this title.

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2557; Pub. L. 97-320, title VII, § 703(d), Oct. 15, 1982, 96 Stat. 1539; Pub. L. 98-353, title III, §§ 301, 425, July 10, 1984, 98 Stat. 352, 369; Pub. L. 99-554, title II, § 253, Oct. 27, 1986, 100 Stat. 3105; Pub. L. 100-597, § 2, Nov. 3, 1988, 102 Stat. 3028; Pub. L. 103-394, title I, § 108(a), title II, § 220, title IV, § 402, title V, § 501(d)(2), Oct. 22, 1994, 108 Stat. 4111, 4129, 4141, 4143.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 109(b) of the House amendment adopts a provision contained in H.R. 8200 as passed by the House. Railroad liquidations will occur under chapter 11, not chapter 7.

Section 109(c) contains a provision which tracks the Senate amendment as to when a municipality may be a debtor under chapter 11 of title 11. As under the Bankruptcy Act [former title 11], State law authorization and prepetition negotiation efforts are required.

Section 109(e) represents a compromise between H.R. 8200 as passed by the House and the Senate amendment relating to the dollar amounts restricting eligibility to be a debtor under chapter 13 of title 11. The House amendment adheres to the limit of \$100,000 placed on unsecured debts in H.R. 8200 as passed by the House. It adopts a midpoint of \$350,000 as a limit on secured claims, a compromise between the level of \$500,000 in H.R. 8200 as passed by the House and \$200,000 as contained in the Senate amendment.

SENATE REPORT NO. 95-989

This section specifies eligibility to be a debtor under the bankruptcy laws. The first criterion, found in the current Bankruptcy Act section 2a(1) [section 11(a)(1) of former title 11] requires that the debtor reside or have a domicile, a place of business, or property in the United States.

Subsection (b) defines eligibility for liquidation under chapter 7. All persons are eligible except insurance companies, and certain banking institutions. These exclusions are contained in current law. However, the banking institution exception is expanded in light of changes in various banking laws since the current law was last amended on this point. A change is also made to clarify that the bankruptcy laws cover foreign banks and insurance companies not engaged in the banking or insurance business in the United States but having assets in the United States. Banking institutions and insurance companies engaged in business in this country are excluded from liquidation under the bankruptcy laws because they are bodies for which alternate provision is made for their liquidation under various State or Federal regulatory laws. Conversely, when a foreign bank or insurance company is not engaged in the banking or insurance business in the United States, then those regulatory laws do not apply, and the bankruptcy laws are the only ones available for administration of any assets found in United States.

The first clause of subsection (b) provides that a railroad is not a debtor except where the requirements of section 1174 are met.

Subsection (c) [enacted as (d)] provides that only a person who may be a debtor under chapter 7 and a railroad may also be a debtor under chapter 11, but a stockbroker or commodity broker is eligible for relief only under chapter 7. Subsection (d) [enacted as (e)] establishes dollar limitations on the amount of indebtedness that an individual with regular income can incur and yet file under chapter 13.

HOUSE REPORT NO. 95-595

Subsection (c) defines eligibility for chapter 9. Only a municipality that is unable to pay its debts as they mature, and that is not prohibited by State law from proceeding under chapter 9, is permitted to be a chapter 9 debtor. The subsection is derived from Bankruptcy Act § 84 [section 404 of former title 11], with two changes. First, section 84 requires that the municipality be "generally authorized to file a petition under this chapter by the legislature, or by a governmental officer or organization empowered by State law to authorize the filing of a petition." The "generally authorized" language is unclear, and has generated a problem for a Colorado Metropolitan District that attempted to use chapter IX [chapter 9 of former title 11] in 1976. The "not prohibited" language provides flexibility for both

the States and the municipalities involved, while protecting State sovereignty as required by *Ashton v. Cameron County Water District No. 1*, 298 U.S. 513 (1936) [56 S.Ct. 892, 80 L.Ed. 1309, 31 Am.Bankr.Rep.N.S. 96, rehearing denied 57 S.Ct. 5, 299 U.S. 619, 81 L.Ed. 457] and *Bekins v. United States*, 304 U.S. 27 (1938) [58 S.Ct. 811, 82 L.Ed. 1137, 36 Am.Bankr.Rep.N.S. 187, rehearing denied 58 S.Ct. 1043, 1044, 304 U.S. 589, 82 L.Ed. 1549].

The second change deletes the four prerequisites to filing found in section 84 [section 404 of former title 11]. The prerequisites require the municipality to have worked out a plan in advance, to have attempted to work out a plan without success, to fear that a creditor will attempt to obtain a preference, or to allege that prior negotiation is impracticable. The loopholes in those prerequisites are larger than the requirement itself. It was a compromise from pre-1976 chapter IX [chapter 9 of former title 11] under which a municipality could file only if it had worked out an adjustment plan in advance. In the meantime, chapter IX protection was unavailable. There was some controversy at the time of the enactment of current chapter IX concerning deletion of the pre-negotiation requirement. It was argued that deletion would lead to a rash of municipal bankruptcies. The prerequisites now contained in section 84 were inserted to assuage that fear. They are largely cosmetic and precatory, however, and do not offer any significant deterrent to use of chapter IX. Instead, other factors, such as a general reluctance on the part of any debtor, especially a municipality, to use the bankruptcy laws, operates as a much more effective deterrent against capricious use.

Subsection (d) permits a person that may proceed under chapter 7 to be a debtor under chapter 11, Reorganization, with two exceptions. Railroads, which are excluded from chapter 7, are permitted to proceed under chapter 11. Stockbrokers and commodity brokers, which are permitted to be debtors under chapter 7, are excluded from chapter 11. The special rules for treatment of customer accounts that are the essence of stockbroker and commodity broker liquidations are available only in chapter 7. Customers would be unprotected under chapter 11. The special protective rules are unavailable in chapter 11 because their complexity would make reorganization very difficult at best, and unintelligible at worst. The variety of options available in reorganization cases make it extremely difficult to reorganize and continue to provide the special customer protection necessary in these cases.

Subsection (e) specifies eligibility for chapter 13, Adjustment of Debts of an Individual with Regular Income. An individual with regular income, or an individual with regular income and the individual's spouse, may proceed under chapter 13. As noted in connection with the definition of the term "individual with regular income", this represents a significant departure from current law. The change might have been too great, however, without some limitation. Thus, the debtor (or the debtor and spouse) must have unsecured debts that aggregate less than \$100,000, and secured debts that aggregate less than \$500,000. These figures will permit the small sole proprietor, for whom a chapter 11 reorganization is too cumbersome a procedure, to proceed under chapter 13. It does not create a presumption that any sole proprietor within that range is better off in chapter 13 than chapter 11. The conversion rules found in section 1307 will govern the appropriateness of the two chapters for any particular individual. The figures merely set maximum limits.

Whether a small business operated by a husband and wife, the so-called "mom and pop grocery store," will be a partnership and thus excluded from chapter 13, or a business owned by an individual, will have to be determined on the facts of each case. Even if partnership papers have not been filed, for example, the issue will be whether the assets of the grocery store are for the benefit of all creditors of the debtor or only for business creditors, and whether such assets may be the subject of a chapter 13 proceeding. The intent of the section is to follow current law that a partnership by es-

toppel may be adjudicated in bankruptcy and therefore would not prevent a chapter 13 debtor from subjecting assets in such a partnership to the reach of all creditors in a chapter 13 case. However, if the partnership is found to be a partnership by agreement, even informal agreement, than a separate entity exists and the assets of that entity would be exempt from a case under chapter 13.

REFERENCES IN TEXT

Section 301 of the Small Business Investment Act of 1958, referred to in subsec. (b)(2), is classified to section 681 of Title 15, Commerce and Trade.

Section 3(h) of the Federal Deposit Insurance Act, referred to in subsec. (b)(2), is classified to section 1813(h) of Title 12, Banks and Banking.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103-394, § 220, 501(d)(2), inserted "a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958," after "homestead association," and struck out "(12 U.S.C. 1813(h))" after "Insurance Act".

Subsec. (c)(2). Pub. L. 103-394, § 402, substituted "specifically authorized, in its capacity as a municipality or by name," for "generally authorized".

Subsec. (e). Pub. L. 103-394, § 108(a), substituted "\$250,000" and "\$750,000" for "\$100,000" and "\$350,000", respectively, in two places.

1988—Subsec. (c)(3). Pub. L. 100-597 struck out "or unable to meet such entity's debts as such debts mature" after "insolvent".

1986—Subsec. (f). Pub. L. 99-554, § 253(1)(B), (2), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (g). Pub. L. 99-554, § 253(1), redesignated former subsec. (f) as (g) and inserted reference to family farmer.

1984—Subsec. (a). Pub. L. 98-353, § 425(a), struck out "in the United States," after "only a person that resides".

Subsec. (c)(5)(D). Pub. L. 98-353, § 425(b), substituted "transfer that is avoidable under section 547 of this title" for "preference".

Subsec. (d). Pub. L. 98-353, § 425(c), substituted "stockbroker" for "stockholder".

Subsec. (f). Pub. L. 98-353, § 301, added subsec. (f).

1982—Subsec. (b)(2). Pub. L. 97-320 inserted reference to industrial banks or similar institutions which are insured banks as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-597 effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100-597, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 349, 921 of this title.

§ 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

(a) In this section—

(1) “bankruptcy petition preparer” means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

(2) “document for filing” means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer’s name and address.

(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer’s signature, an identifying number that identifies individuals who prepared the document.

(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(d)(1) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor’s signature, furnish to the debtor a copy of the document.

(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(e)(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

(2) A bankruptcy petition preparer may be fined not more than \$500 for each document executed in violation of paragraph (1).

(f)(1) A bankruptcy petition preparer shall not use the word “legal” or any similar term in any advertisements, or advertise under any category that includes the word “legal” or any similar term.

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

(g)(1) A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

(h)(1) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

(2) The court shall disallow and order the immediate turnover to the bankruptcy trustee of

any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).

(3) The debtor, the trustee, a creditor, or the United States trustee may file a motion for an order under paragraph (2).

(4) A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—

(A) the debtor’s actual damages;

(B) the greater of—

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer’s services; and

(C) reasonable attorneys’ fees and costs in moving for damages under this subsection.

(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of \$1,000 plus reasonable attorneys’ fees and costs incurred.

(j)(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

(2)(A) In an action under paragraph (1), if the court finds that—

(i) a bankruptcy petition preparer has—

(I) engaged in conduct in violation of this section or of any provision of this title a violation of which subjects a person to criminal penalty;

(II) misrepresented the preparer’s experience or education as a bankruptcy petition preparer; or

(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

(B) If the court finds that a bankruptcy petition preparer has continually engaged in con-